#2569 signed 12-21-01

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	
STEPHEN C. HENNESY,	**CASE NO. 00-40861-13**
PATRICIA M. HENNESY,	**CHAPTER 13**
DEBTORS.	

ORDER ON FEE APPLICATION OF DEBTORS' COUNSEL AND MOTION FOR SANCTIONS AGAINST CREDITOR CRAIG COMAS

These matters are before the Court for decision following a bench trial. The debtors appeared by counsel Brenda J. Bell. Creditor Craig Comas appeared *pro se*. Chapter 13 Trustee Jan Hamilton also appeared *pro se*. The Court has considered the evidence presented at trial and reviewed the relevant materials, and is now ready to rule.

FACTS

Before the debtors filed for bankruptcy, Mr. Hennesy owned and operated roofing and guttering businesses, and the debtors owned a number of rental properties. Mr. Comas, a CPA, was their accountant. On April 3, 2000, Mr. Hennesy sold the roofing business, but kept the guttering business. On April 21, the debtors filed a chapter 13 bankruptcy petition. The next day, aware that the debtors were considering filing for bankruptcy but perhaps not yet aware that they had, Mr. Comas wrote a letter terminating his accounting relationship with Mr. Hennesy, indicating he was owed $3,740.89.

On May 18, 2000, Mr. Comas filed a proof of claim for the $3,740.89, plus $82.54 in prepetition interest, initially asserting that it was a priority claim as an administrative expense pursuant to

11 U.S.C.A. §503(b)(4). On May 30, the trustee objected to the asserted priority of the claim, suggesting it should be allowed without interest. A week later, the debtors joined in that objection and added that the proof of claim had not been properly served. On June 19, Mr. Comas filed an amended proof of claim, deleting the assertion of priority status. The claim was allowed as the trustee had suggested.

At the meeting of creditors held pursuant to §341(a), Mr. Comas raised the question whether the debtors had appraisals of their rental properties. Mr. Hennesy indicated that he had appraisals of some of them that had been made in the last three years, and Ms. Bell promised to supply copies of them or make them available for copying. In fact, Mr. Comas already had copies of appraisals of at least some of the properties, but was being advised by an attorney that he should not make them public because the law was unclear whether he would be violating some accountant's duty by doing so. Much of the dispute between Ms. Bell and Mr. Comas seems to have concerned his efforts to get the debtors to produce the appraisals they had of the properties.

On their schedules, the debtors indicated they owned seven mortgaged rental properties, identifying them and giving their values and mortgage balances as follows:

Property address	Value	Mortgage balance
Route 1, Box 410, Liberal	$20,000	$20,000
417/419 S. 12th, Manhattan	$50,000	$50,000
527 Moro, Manhattan	$67,000	$67,456 (2 mortgages)
901 Osage/319 N. 9th, Manhattan	$70,000	$71,819
8656/8658 Hannah Lane, Manhattan	$52,000	$51,539
826 Yuma, Manhattan	$52,000	$46,668
1017 Laramie, Manhattan	$90,000	107,000 (2 mortgages)

Their initial plan indicated that they were going to keep all these properties, making the mortgage payments directly to the mortgage holders. They were going to pay the trustee $504 per month under this plan. Ultimately, at a confirmation hearing on May 3, 2001, the debtors produced appraisals valuing the following properties on the dates indicated:

Property address	Appraisal date	Appraised value
527 Moro	Dec. 14, 1998	$ 71,000
527 Moro	Sept. 30, 1999	$ 90,000
901 Osage/319 N. 9th	Nov. 12, 1998	$ 90,500
901 Osage/319 N. 9th	Jan. 18, 2000	$102,000
1017 Laramie	Nov. 4, 1998	$109,000
1017 Laramie	Nov. 7, 2000	$122,000
8656/8658 Hannah Lane	Nov. 23, 1998	$ 51,000
8656/8658 Hannah Lane	Nov. 20, 2000	$ 62,000
417/419 S. 12th	Nov. 2, 1998	$ 56,000
417/419 S. 12th	Aug. 10, 1999	$ 63,000
417/419 S. 12th	Oct. 5, 1999	$ 63,000

The Court notes that the second appraisals of 1017 Laramie and 8656/8658 Hannah Lane were done after the debtors filed for bankruptcy. In an amended plan they filed in February 2001, the debtors indicated they agreed to allow the secured lenders to proceed with *in rem* foreclosures against 527 Moro, 901 Osage/319 N. 9th, 8656/8658 Hannah Lane, and 826 Yuma Street, although the debtors would try to sell the properties if they could before judicial sales occurred. The debtors wanted to keep the other three rental properties and continue making the regular monthly mortgage payments on them. The debtors' equity in these three properties was less than the balance that was owed to Mr. Hennesy for the sale of his roofing business. Under this plan, the debtors would be paying the trustee $905 per month. The Court confirmed the debtors' plan at the May 3 hearing.

At the same time as the debtors' amended plan was filed, Ms. Bell filed an application to have her fees allowed as an administrative expense. Both the trustee and Mr. Comas objected. In his objection, filed May 2, Mr. Comas asked for various sanctions against Ms. Bell, including (1) denying her fee application, (2) dismissing her as the debtors' attorney, and (3) ordering her to pay punitive damages to him. He also asked to have his legal fees and appraisal costs of $6,774.90 allowed as an administrative expense of the chapter 13 proceeding (an attorney had represented him from May 2000 until February or March 2001). The debtors responded on May 11 that Mr. Comas's pleading was not founded in law or fact and violated Federal Rule of Bankruptcy Procedure 9011, and he should be ordered to pay costs, attorney fees, and sanctions.

On May 11, Ms. Bell also filed a revised application for allowance of her fees and expenses. In the revised application, Ms. Bell sought approval of fees and expenses totaling $11,086.62[1] for her representation of the debtors in this case. Mr. Comas responded to the revised fee application three days later, essentially repeating his prior objection and request for sanctions. The trustee repeated his objection to the fee application and added that interest charges included in the application should not be allowed.

Also on May 11, Ms. Bell filed a motion, pursuant to Bankruptcy Rule 9011, for sanctions against Mr. Comas. After the caption and title, the motion reads:

---

[1]Actually, the pleading states that the amount sought is $10,395.17, but the supporting documentation indicates the amount is $10,050.24 plus $872.50 in payments and $163.88 in "incidental charges" that had been deducted from the bills.

COMES NOW the Debtors, by and through their attorney, Brenda J. Bell and for their Motion for Attorney Fees and Costs Pursuant to B.R. 9011 as Against Craig Comas allege and state:

1. Debtors attach a revised fee application which details attorney fees in the amount of $2,584.00 and $600.00 for Jan Marks, CPA.
2. Craig Comas actions violate B.R. 9011 on the following grounds:

9011(b)(1):

They are a result of his failure to make reasonable inquiry. Comas is pro se, but previously represented by counsel and the fact that he is pro se is not an excuse for violations of B.R. 9011[;]

9011(b)(1):

The aforementioned pleadings are filed for an improper purpose in order to harass and to cause the Debtors needless increase in the cost of litigation[; and]

9011(b)(3):

The aforementioned pleadings have not [sic] basis in fact or law and are frivolous.

WHEREFORE Debtors pray that this Court impose fees and/or sanctions against Craig Comas in the amount of $2,584.00 and $600.00 for Jan Marks, CPA, and for such other and further such [sic] just and equitable relief as the Court deems necessary.

As a careful reading reveals, the pleading failed to specify what actions Mr. Comas took that resulted from his alleged failure to make reasonable inquiry, and failed to identify the pleadings he had filed that were alleged to have been improperly motivated. The Court also understands the pleading to be asking for fees for Ms. Marks as an accountant, not an attorney, but the Court can discern no explanation of the basis for this request. On May 25, Mr. Comas responded to the motion and, among other things, withdrew his requests for sanctions against Ms. Bell. However, he repeated his request that his attorney fees be allowed as an administrative expense.

DISCUSSION

The Court will address Ms. Bell's revised fee application first, and then her motion for sanctions against Mr. Comas.

A. Fee Application

The Court has reviewed the total time spent on the case from April 21, 2000, to May 7, 2001, and in accordance with its previous decision in *In re Smith, No. 83-40427 (Dec. 10, 1984), motion to modify and amend denied, Jan. 30, 1985*, finds as follows. As indicated, Ms. Bell has submitted bills showing total fees and expenses of $11,086.62. However, the supporting materials supplied document only $9,264.30 in fees and expenses. The Court notes that no bill for January 2001 was submitted, so that may explain the discrepancy.

The trustee properly objects that Ms. Bell is not entitled to recover interest from the bankruptcy estate. The general rule in bankruptcy has long been that interest stops running when a bankruptcy case is filed. *See United Savings Ass'n v. Timbers of Inwood Forest*, 484 U.S. 365, 372-73 (1988); *Bruning v. United States*, 376 U.S. 358, 362-63 (1964) (rule aims to avoid unfairness between competing creditors and to avoid administrative inconvenience); *see also City of New York v. Saper*, 336 U.S. 328, 330 (1949) (indicating rule had been borrowed from English bankruptcy system and followed in United States for nearly 200 years); 11 U.S.C.A. §502(b)(2) (on objection, court to disallow claim for unmatured interest; not directly applicable to administrative expenses). The Bankruptcy Code contains some exceptions to this general rule, for example, providing that oversecured creditors are entitled to interest, *see* §506(b), but no exception applies to Ms. Bell's fees. To the extent they meet the standards of §330(a)(4)(B), Ms. Bell's fees are allowable under §503(b)(2) and qualify for an administrative expense priority under §507(a)(1). Section 1322(a)(2) requires that a chapter 13 plan "provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title," but this language does not require that interest be paid

on such claims. *See* Keith M. Lundin, *Chapter 13 Bankruptcy*, §100.2 & §299.1 (3d ed. 2000). The Court has deducted $304.71 for this item.

In many instances, Ms. bell's time is documented by descriptions such as "telephone calls," "letter to" client or someone else, "meeting with" or "conference with" client or someone else, "review of file," or similar phrases. With no description of the subject or topic of the letter, meeting, or other work, the Court cannot determine whether the charges involved were reasonable and necessary, as required for them to be compensable under §330(a)(4)(B). For this problem, the Court must deduct $1,873.75 from the fee request.

The Court has found $158.08 in "billable costs" included on the application which are not explained or described at all, and will deduct these charges.[2] The Court has also found $30.50 in expense charges for items such as postage and photocopies that have not been shown to be other than a part of ordinary office overhead, and an item inadequately described only as "travel to Topeka." The Court will deduct these charges as well.

Altogether, these deductions total $2,367.04. Subtracting them from the total charges shown by the bills, $9,264.30, leaves allowable fees and expenses of $6,897.26. While this amount is quite a bit higher than the typical fees and expenses the Court sees in chapter 13 cases, the debtors' extensive rental property business and the active participation of Mr. Comas and one or two other creditors have combined to make the case one requiring significantly more of counsel's time than the typical chapter

---

[2]The Court notes that the documentation shows that counsel had deducted $163.88 from one bill, describing the item as "incidental charges." This could concern the undocumented expenses. However, the Court has ignored the deduction in making its calculations, so there is no danger that the deduction noted in the text duplicates it.

13 case. The current mailing matrix contains sixty parties, another indication of the complexity of the case. The Court concludes that these fees and expenses are properly allowable under §330(a)(4)(B).

B. Motion for Sanctions

The debtors ask the Court to sanction Mr. Comas pursuant to Federal Rule of Bankruptcy Procedure 9011(b) and (c) for allegedly acting improperly and filing improper pleadings. Rule 9011 provides in pertinent part:

> **(b) REPRESENTATIONS TO THE COURT.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> . . . [and]
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; . . .
>
> . . . .
>
> **(c) SANCTIONS.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.
>
> (1) How Initiated.
>
> (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .

In Ms. Bell's motion for sanctions, she certified that she served it on Mr. Comas by mail on May 10, 2001. Contrary to subdivision (c)(1)(A) of the Rule, she then filed the motion with the Court the next day. Furthermore, as indicated earlier, the motion does not "describe the specific conduct alleged to violate subdivision (b)" of the Rule, as subdivision (c)(1)(A) also requires. Ms. Bell's response to Mr. Comas's objection to her application for fees does state that she thought that his objection violated Rule 9011. However, as now permitted by the "safe harbor" portion of subdivision (c)(1)(A), Mr. Comas withdrew the parts of his objection that may have been improper, namely those asking for various sanctions against Ms. Bell, so that pleading may not serve as a basis for sanctions under the Rule. These facts alone require the Court to deny Ms. Bell's motion for sanctions.

A review of the fees Ms. Bell asks to have imposed on Mr. Comas further convinces the Court that the motion should be denied. The earliest fees sought concern the debtors' objection to Mr. Comas's original proof of claim. That objection joined the trustee's objection that the claim did not qualify for priority status, and otherwise suggested the claim should be disallowed because it was not properly served. Mr. Comas amended the claim less than twenty-one days after Ms. Bell prepared the objection to remove the assertion of priority status, again satisfying (if necessary) the "safe harbor" provision of Rule 9011. Pursuant to the trustee's objection, the claim was allowed as a general unsecured claim, and the debtors did not pursue their complaint about improper service.

Most of the other fees appear to involve work that would have been required even if Mr. Comas had not participated in the case at all. Therefore, he could not have caused all the work to be done but, at most, might have increased the time required to complete the tasks. For example, many of the fees sought involve preparing responses to inquiries from the chapter 13 trustee, but Ms. Bell has

not suggested that the trustee violated Rule 9011. Many more of the fees involve work on the debtors' amended plan, the preparation of a liquidation analysis (presumably the one presented at the confirmation hearing on May 3, 2001), and preparation for and attendance at the confirmation hearing. Since the chapter 13 trustee had objected to the amended plan on two grounds, one of which was that it contained no liquidation analysis, and again, Ms. Bell has not suggested that the trustee violated Rule 9011, the Court cannot understand how all these fees could be attributed to Mr. Comas's activities. Some of the fees involve preparation of the revised fee application. Again, the trustee objected to both the original and the revised fee application, so those fees cannot be blamed solely on Mr. Comas. Finally, the motion for sanctions also seeks fees for an accountant. The accountant's bill indicates that she prepared an analysis of tax projections and testified at a hearing in Topeka on May 4, 2001 (actually the May 3 confirmation hearing). In order to prove to the satisfaction of the trustee and the Court that their plan was feasible, the debtors had to present such evidence at the confirmation hearing, and Mr. Comas's objections could not be considered to have generated all these fees. In short, even if he acted improperly, Mr. Comas could not reasonably be taxed with many of the fees sought in the motion. These considerations further support the Court's conclusion that the motion for sanctions should be denied.

CONCLUSION

For these reasons, Ms. Bell is allowed fees and expenses of $$6,897.26. Her motion for sanctions against Mr. Comas is denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of December, 2001.

_____
JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE